

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Terry Moses,

Complainant,
vs.

ORDER FINDING
NO PROBABLE CAUSE
AND DISMISSING COMPLAINT

Roseville Properties Management
Company, d/b/a Roseville Properties
and/or 801 Transfer Road LLC,

Respondent.

This matter came on for a probable cause hearing under Minn. Stat. § 211B.34, before Administrative Law Judge (ALJ) Richard C. Luis on October 26, 2005, to consider a complaint filed by Terry Moses on October 21, 2005.

Complainant Terry Moses, 1776 Maple Lane, Roseville, MN 55113, participated by telephone, representing himself.

Matthew W. Haapoja, Esq., Trimble & Associates, Ltd., 10201 Wayzata Blvd, Suite 130, Minneapolis, MN 55305, participated by telephone, representing Respondent Roseville Properties Management Company, d/b/a Roseville Properties and /or 801 Transfer Road LLC.

Based on the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds no probable cause to believe that the Respondent violated Minnesota Statute § 211B.15 by having campaign signs posted on three commercial properties owned by Respondent.

ORDER

IT IS ORDERED:

1. That there is no probable cause to believe that Respondent violated Minnesota Statute § 211B.15 as alleged in the Complaint.
2. That this Complaint is DISMISSED.

Dated: October 27, 2005

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Tape recorded. One tape.

NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statute § 211B.34, subdivision 3 provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under section 211B.35 within five business days after granting the petition.

MEMORANDUM

The Complaint alleges that Roseville Properties is supporting two candidates for Roseville City Council by having campaign signs for those candidates on three of its commercial properties.^[1] These properties are located in Roseville at 1955 County Road B2 West, 1975 County Road B2 West, and 2575 Fairview Avenue.

According to the Complaint, the two candidates are publicly supporting the “Twin Lakes” development project being proposed by Roseville Properties, on other properties it owns, under a partnership with other developers.^[2] The “Twin Lakes” development is highly controversial and has only been partially approved. The Complaint maintains that Roseville Properties needs a great deal of assistance from the City to proceed with the proposal, and that Roseville Properties “will reap enormous financial gain” if it is finally approved.

Complainant maintains that Respondent violated Minn. Stat. § 211B.15, subd. 1, because it is a corporation with campaign signs posted on its premises that benefit or support two candidates for Roseville City Council.

Minn. Stat. § 211B.15, subd. 11, provides:

It is not a violation of this section for a corporation selling products or services to the public to post on its public premises messages that promote participation in precinct caucuses, voter registration, or elections if the messages are not controlled by or operated for the advantage of a candidate, political party, or committee.

The statute is written in the negative, implying that it is a violation for corporations to post messages that promote participation in elections if the messages are controlled by or operated for the advantage of a candidate.

Respondent argues that the Complaint fails to state any violation of Minn. Stat. § 211B.15, because Roseville Properties is not a corporation in control of the three properties on which the campaign signs were posted. As proof, Respondent presented two Warranty Deeds, the first of which is dated December 26, 1978, conveying the properties at 1955 West County Road B2 and 2575 North Fairview Avenue to Roseville Properties, a general partnership composed of Raymond Dykema, Daniel Commers, Clement Commers, and Frederick Commers.^[3] The second Warranty Deed is dated February 28, 2000, and it conveys the property at 1975 West County Road B2 to COR Partnership, a Minnesota general partnership composed of Daniel Commers, Clement Commers, Frederick Commers, Victor Reim, and Bruce Odlaug.^[4] The Roseville Properties partnership, addressed at 2575 Fairview Avenue, is the location to which the Ramsey County Property Tax Statements are mailed for each of the three properties discussed above.^[5]

Each of the partners in Roseville Properties and COR Partnership own their interest in the partnerships individually.^[6] The partnerships created Roseville Properties Management Company, a closely held corporation, to manage the three properties at issue.^[7] Roseville Properties Management Company does not provide fee management services for other entities.^[8]

The prohibition in Minn. Stat. § 211B.15, subd. 11 relates only to corporations. Nowhere in the language of the statute does it state that general partnerships or limited liability partnerships are controlled by section 211B.15, subd. 11. Minn. Stat. § 211B.15, subd. 1 defines a corporation for the purposes of the Fair Campaign Practices Act and limits the application of the statute to such entities, which do not include partnerships.

Complainant argues that the fact that the corporation Roseville Properties Management Company manages the three properties means that the corporation controls those properties. But Roseville Properties Management Company does not own the properties, and Complainant has not presented any evidence to support his claim that the corporation controls the properties.

It is noted also that Minn. Stat. § 211B.15, subd. 11 references only those corporations “selling products or services to the public.” Roseville Properties Management Company is a closely held corporation that does not sell products and offers services only to the three properties at issue.

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.^[9] The Administrative Law Judge finds that Complainant has not demonstrated sufficient probable cause to show a violation of Minn. Stat. § 211B.15 occurred. Therefore, this matter will be dismissed.

R.C.L.

^[1] Exs. 1, 2, and 3.

^[2] Ex. 12.

^[3] Ex. 4. Prior to the hearing, the Complainant understood 801 Transfer Road LLC to be the owner of the 2575 Fairview Avenue property. At the hearing, counsel for Respondent clarified the issue, and the parties stipulated that the Fairview property is in fact owned by Roseville Properties, as shown by Exhibit 4. The parties agree that 801 Transfer Road LLC should not be a Respondent in this matter.

^[4] Ex. 5. See *also* Ex. 11. Testimony of Scott Clover, Controller of Roseville Properties Management Company. COR Partnership was formed on November 9, 1995. Ex. 10.

^[5] Exs. 6, 7, and 8.

^[6] Testimony of Scott Clover. Exs. 9 and 11.

^[7] Testimony of Scott Clover.

^[8] Testimony of Scott Clover.

^[9] Minn. Stat. § 211B.34, subd. 2.